(2021) 10 NCLT CK 0055

In the National Company Law Tribunal

Case No : CA (CAA)/48/MB-IV/2021

Agyo Cosmetics Private Limited Vs

Date of Decision : 18-10-2021

Acts Referred:

Companies Act, 2013 — Section 230, 230(5), 232
Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 — Rule 8

Citation : (2021) 10 NCLT CK 0055

Hon'ble Judges : Suchitra Kanuparthi, Member (J);Rajesh Sharma, Member (T)

Bench : Division Bench

Advocate : Vidisha Poonja, Hemant Sethi

Final Decision : Disposed Of

Judgement

Rajesh Sharma, Member (Technical)

1. This Bench is convened through video conferencing today.

2. The Counsel for the Applicant Companies submits that the present Scheme is a Scheme of Amalgamation of Agyo Cosmetics Private Limited ('Transferor Company 1'), Shreeganga Bricks Private Limited ('Transferor Company 2') ('together known as 'Transferor Companies') with Saurashtra Exim Private Limited ('Transferee Company') and their respective shareholders (the 'Scheme') under the provisions of Section 230 to 232 of the Companies Act, 2013.

3. The Counsel for the Applicant Companies further submits that:

a. The Transferor Company 1 is engaged in the business of manufacturing and trading of cosmetic products, fitness and other beauty products.

b. The Transferor Company 2 is engaged in the business of manufacturing and distributing of bricks, refractory product bricks and other related products.

c. The Transferee Company is engaged in the business of importing and exporting of coke, coal in all forms and/or byproducts thereof and to carry on the trade or business of ferrous and non-ferrous metals of all types. Also, the Transferee Company has started the business of manufacturing and trading of cosmetic products and other beauty products. Furthermore, the Transferee Company has also started the business of manufacturing and distributing of bricks.

4. The Counsel for the Applicant Companies further submits that the rationale for the Scheme is as under:

"The Transferor Company 1 and Transferor Company 2 are the wholly owned subsidiaries of the Transferee Company. The proposed amalgamation will result in organizational efficiencies, reduction in overheads, administrative, operational costs and other expenses and optimal utilization of various resources. It will prevent cost duplication and the resultant operations would be substantially cost-efficient."

4. The Counsel for the Applicant Companies further submits that the entire issued, subscribed and paid up share capital of the Transferor Company 1 and the Transferor Company 2 is held directly by the Transferee Company. Thus, no consideration shall be payable by the Transferee Company upon the amalgamation of the Transferor Companies with the Transferee Company pursuant to clause 5 of the Scheme.

5. The Counsel for the Applicant Companies further submits that the Board of Directors of the Applicant Companies in their respective meetings held on 03rd February, 2021 have approved the Scheme. The Appointed Date for the Scheme is 01st April, 2021.

6. The Counsel for the Applicant Companies further submits that there are two (2) Equity Shareholders in the First Applicant Company and the consent affidavits of both the Equity Shareholders of the First Applicant Company have been annexed as Annexure 'H1' to the Company Scheme Application. In view of the fact that all the Equity Shareholders of the First Applicant Company have given their consent to the Scheme, the meeting of the Equity Shareholders of the First Applicant Company is hereby dispensed with.

7. The Counsel for the Applicant Companies further submits that there are two (2) Equity Shareholders in the Second Applicant Company and the consent affidavits of both the Equity Shareholders of the Second Applicant Company have been annexed as Annexure 'H2' to the Company Scheme Application. In view of the fact that all the Equity Shareholders of the Second Applicant Company have given their consent to the Scheme, the meeting of the Equity Shareholders of the Second Applicant Company is hereby dispensed with.

8. The Counsel for the Applicant Companies further submits that there are two (2) Equity Shareholders in the Third Applicant Company and the consent affidavits of all the Equity Shareholders of the Third Applicant Company have been annexed as Annexure 'H3' to the Company Scheme Application. In view of the fact that all the Equity Shareholders of the Third Applicant Company have given their consent to the Scheme, the meeting of the Equity Shareholders of the

Third Applicant Company is hereby dispensed with.

9. The Counsel for the Applicant Companies further submits that there are no Secured Creditors in the Applicant Companies and therefore the question of issuing notices to the Secured Creditors of the Applicant Companies does not arise.

10. The Counsel for the Applicant Companies further submits that there are three (3) Unsecured Creditors of Rs 29,59,63,493/- in value in the First Applicant Company and the consent affidavits of all the unsecured creditors of the First Applicant Company have been annexed as Annexure 'K1' to the Company Scheme Application. In view of the fact that 100% of the unsecured creditors of the First Applicant Company have given their consent to the Scheme, the meeting of the Unsecured Creditors of the First Applicant Company is hereby dispensed with.

11. The Counsel for the Applicant Companies further submits that there are three (3) Unsecured Creditors of Rs 29,03,02,500/- in value in the Second Applicant Company and the consent affidavits of all the unsecured creditors of the Second Applicant Company have been annexed as Annexure 'K2' to the Company Scheme Application. In view of the fact that 100% of the unsecured creditors of the Second Applicant Company have given their consent to the Scheme, the meeting of the Unsecured Creditors of the Second Applicant Company is hereby dispensed with.

12. The Counsel for the Applicant Companies further submits that there are three (3) Unsecured Creditors of Rs 3,02,500/- in value in the Third Applicant Company and the consent affidavits of all the unsecured creditors of the Third Applicant Company have been annexed as Annexure 'K3' to the Company Scheme Application. In view of the fact that 100% of the unsecured creditors of the Third Applicant Company have given their consent to the Scheme, the meeting of the Unsecured Creditors of the Third Applicant Company is hereby dispensed with.

13. The Applicant Companies are directed to serve notices along with copy of the Scheme through Registered Post- AD/ Speed Post and Hand Delivery upon: -

(i) concerned Income Tax Authority within whose jurisdiction the respective Applicant Company's assessments are made, clearly indicating the PAN of the Applicant Company concerned, i.e., for the First Applicant Company - PAN AANCA6449H having jurisdiction at CIRCLE 3(1)(1), Aayakar Bhavan, Maharshi Karve Road, Churchgate, Mumbai - 400020; for the Second Applicant Company - PAN AAJCS4769A, having jurisdiction at Ward 3(3)(1), Aayakar Bhavan, Maharshi Karve Road, Churchgate, Mumbai - 400020; and for the Third Applicant Company - PAN AAJCS9036L, having jurisdiction at Ward 3(3)(1), Aayakar Bhavan, Maharshi Karve Road, Churchgate, Mumbai - 400020.

(ii) the Central Government through the office of Regional Director, Western

Region, Mumbai;

(iii) Registrar of Companies, Mumbai; and

(iv) GST Authorities concerned of applicant Companies.

(v) Official Liquidator in so far as the Transferor Companies are concerned.

14. The Transferor Companies are also directed to serve notice upon Official Liquidator, High Court, Bombay, pursuant to section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The Tribunal is appointing M/s Paras Savla & Associates, Chartered Accountants, having their office at, 06 Navrang Shopping Arcade, Gokhale Road, Thane West, Mumbai - 400601, Mobile No. 9821657543/9324334344, [Email: paras@psaindia.net] to assist the Official Liquidator to scrutinize the books of accounts of the said the Transferor Companies for the last 5 years and submit its report to the Tribunal. The Transferor Companies to pay fees of Rs. 50,000/- for this purpose. If no representation/response is received by the Tribunal from Official Liquidator, High Court, Bombay within a period of 30 days from the date of receipt of such notice, it will be presumed that he has no representation / objection to the proposed Scheme as per rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The Applicant Companies shall file compliance report with the registry in regard to the directions given in this Order in lieu of customary affidavit of service, due to lockdown situation prevailing now proving service of notices to the regulatory authorities as stated above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.